AMENDMENTS TO THE DRAWINGS:

The attached formal drawing sheets replace the original sheets.

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE,
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

REMARKS

The claims have been amended to address the minor clerical errors and the 112 rejection. No new matter has been entered. New claims 9-19 have been added to further scope the invention. In particular, independent claim 9 essentially combines the preamble of claim 8, the accident investigation form of claim 7 and the method of claim 1. It is submitted that all of the claims, as amended, define a patentable invention.

Turning to the rejection under 35 USC 101, the Examiner has rejected claims 1 – 6 and 8 under 35 U.S.C. 101, alleging that they are directed to "non-statutory subject matter". Specifically, the Examiner has alleged that while the teaching steps of claims 1 and 8 are "useful and tangible", they are not "substantially repeatable" and are not "concrete". The Applicant respectfully disagrees.

The Examiner has argued that "though an attempt may be made to teach an individual, there is no guarantee or reasonable expectation that the individual will learn the teachings". The Applicant respectfully submits that in the context of the claims, "teaching" *does* require that an individual actually learn, which is in contrast to having an individual demonstrate, explain, lecture, or the like. That is, an *unsuccessful* attempt to instruct an individual does not satisfy the "teaching" limitation of claim 1 as no one has been *taught* to effect a critical error reduction technique, and the Applicant has no difficulty with that. When someone performs what *is* claimed – i.e. *teaching an individual* – by definition, at least one individual has learned or been taught.

Thus, the Applicant submits that the "teaching" step is quite concrete and asks that this objection be withdrawn.

Turning to the art rejections, and considering first the rejection of claims 1-6 and 8

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under 35 USC 102 as anticipated by Wilson, Applicant submits that the claimed invention distinguishes from the Wilson paper in at least the following manners:

To being with, the Wilson paper (written by the inventor of the subject patent application) was published as a marketing piece and was never intended to provide a full and completely enabling disclosure – and in fact, it does not. It was simply intended to provoke interest in a safety training program, a program which happens also to be different from the claimed safety system;

The premise of the Wilson paper is to show that there are problems with "Behavior Based Safety", and to show a way in which it could be fixed. Behavior Based Safety (BBS) is completely different from accident investigation and prevention – which is the subject of the patent application.

BBS is the use of behavioral psychology to promote safety. A systematic, ongoing process of safety committees, "coaches" and "teams", safety meetings and the like, is set up to identify and discuss safe work practices. The process relies on observation, communication, feedback and reinforcement to encourage and support good safety practices. This is completely unlike the claimed method and system, which is based on accident investigation.

The legal treatment of accident prevention and general safety training might help emphasize the difference between the two. Implementing a general safety training program will likely be appreciated by a company's insurance carrier and result in lower rates. However, even with a general safety training program in place, the company is going to have a major difficulty if the same serious accident occurs twice. The expectation after the first occurrence of the serious accident is that the company directly address the problem that caused the

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accident and correct it. If they do not, the company significantly increases their legal liability and may face more serious repercussions from government authorities (OPSHA, etc.);

The system described in the Wilson paper has an entirely different context than the claims in the subject patent application. The Wilson paper is describing a group presentation or training program, which could be added to a BBS system. This is clear from the description on page 3 of Wilson, which repeatedly makes references such as:

a) "1. Conduct a Pareto Analysis…", which, as explained on page 1, is a method of analyzing a large collection of causal data;

b) "3. Train all employees…"; and

c) "4. Give employees specific techniques…"

This is in clear contrast to the claimed method of responding to the occurrence of a specific "accident or close call" (see claim 1, line 3).

Because all of the elements of the claims are with regard to accidents or close calls, none of the elements of the claims are described in the Wilson paper;

Further, the reference in the Wilson paper to the Pareto analysis indicates that the analysis is being applied to a company's entire history of accidents, or at least to a large statistical sample.

Again, this is contrast to the claimed method of responding to the occurrence of a specific "accident or close call" (see claim 1, line 3); and

The Applicant does not concede that the Wilson paper describes any of the elements of the claims, but notes that even the Examiner has recognized that the order of the steps described in the Wilson paper does not match that of claim 1. Specifically, in the Examiner's allegation, he has changed the order of the first two steps.

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The Applicant submits that this is significant because in the case of an accident analysis (the subject of the claims), one would not want to perform the step of "classifying the cause..." before performing the step of "determining the mental state...", as this would limit the options available.

The dependent claims introduce additional elements which further distinguish from the Wilson paper. At the very least, each claim element is directed to the analysis and response to actual, individual accidents or close calls, while the Wilson paper is directed to a group training program. Thus, none of the elements of these dependent claims are disclosed in the Wilson paper.

Because the Wilson paper does not describe all of the elements of these claims, Applicant submits that Wilson paper does not anticipate claims 1 to 6 and 8.

Turning to the rejection of claim 7 under 35 U.S.C. 103 as being obvious in view of the Wilson paper in combination with the article "Throw Away Your Old Safety Forms" (the Buresh et al. paper), in short, the Examiner has alleged that Buresh describes the use of accident investigation forms, and that Wilson describes all of the content with which to populate such forms. The Applicant does not agree with either contention.

The Applicant submits firstly, that the Buresh paper is clearly teaching away from the invention. Buresh et al. are criticizing the use of simple accident reporting forms such as the one on page 62 in favour of a comprehensive investigation analysis process. This is clear from a reading of the entire article. The exemplary questions which they pose depend entirely on the scenario being investigated and the data collected as the investigation proceeds. These questions cannot simply be placed into a checklist or reporting form. This is why the title instructs the reader to "Throw Away Your Old Safety Forms", and why the middle column on

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page 61 reads: "Yet few accident investigation forms ask questions that will obtain this information. The result is ultimately inappropriate conclusions."

In other words, Buresh et al. are stating that accident reporting forms should NOT be used.

The Applicant also reiterates as outlined above, that the Wilson paper does not describe the missing elements of the claimed invention. Thus, the Applicant submits that claim 7 cannot be considered obvious in view of the Wilson and Buresh papers in combination.

A Supplemental Declaration and formal drawings accompany this Amendment.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action is respectfully requested.

Enclosed is Form PTO-2038 in the amount of $230.00 to cover the cost of the Petition for Two Month Extension.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

HAYES SOLOWAY P.C.
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TEL. 603.668.1400
FAX. 603.668.8567

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 9, 2007, at Tucson, Arizona.

By Patricia Sorensen

NPS:ps

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE,
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